



July 25, 2011

***, Superintendent

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| THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION |
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RE: **FINAL REPORT** in response to OPI state complaint In the Matter of ***, 2011-03, Alleged Violations of the Individuals With Disabilities Education Act (IDEA) and Montana special education provisions.

Dear **** and Superintendent ****,

This is the Final Report pertaining to the above state special education complaint ("Complaint") filed pursuant to the Administrative Rules of Montana (ARM)10.16.3662. **** ("Complainant") is the **** of *** ("Student") and alleges the **** School District ("District") failed to provide a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) and Montana special education laws. ****'s mother, ****, ("parent") provided written permission to share confidential information on the matter.

Complainant alleges:

1. The District failed to offer FAPE between March 19, 2010 and April 5, 2010 when the Student was at home waiting for admission to Shodair Children's Hospital (Shodair).
2. The District failed to provide FAPE or follow-up during the Student's admission to Shodair from April 5, 2010 through his release in June 12, 2010 or after his release through January, 2011.
3. The District denied the parent the opportunity to participate in the educational placement meeting by failing to advise her in writing, or verbally, of the date, time, and place scheduled for an Independent Education Program (IEP) educational placement team meeting held November, 11, 2010.
4. The District refused to discuss alternative placements for the Student at the November 11, 2010 meeting, thus denying FAPE.
5. The District contacted and requested information from Shodair staff for the November 11, 2010 meeting without the parent's prior knowledge or consent.
6. The District failed to provide the parent with a copy of the Procedural Safeguards Notice after the Complaint was filed.
7. The District failed to contact the parent to schedule an IEP that was supposed to happen two weeks after the November 11, 2010 meeting, nor did they attempt to schedule an IEP meeting or contact her in writing or verbally for any reason (with the exception of emailing meeting notes at her request), until after Complainant filed a State Complaint in December, 2010, (which was later withdrawn).

A. Procedural History

1. On April 11, 2011, the Montana Office of Public Instruction (OPI) received a Complaint signed by Complainant.
2. The OPI provided a copy of the Complaint to the District. The OPI Early Assistance Program attempted to resolve the dispute pursuant to ARM 10.16.3660 but concluded resolution was not possible.
3. On April 29, 2011, OPI received the District's initial response to the allegations.
4. The case moved forward with the appointment of an investigator. Complainant then substantially amended the Complaint, which OPI received on May 24, 2011, triggering a revised 60-day timeline related to the Amended Complaint.
5. The District provided written responses to the Amended Complaint on June 24, 2011.
6. On July 1, 2011, OPI received a written Response to the Amended Complaint from the District.
7. On July 8, 2011, the OPI received Complainant's written Reply to the District Response to the Amended Complaint.
8. The investigation consisted of a review of documents provided by Complainant and the District and interviews of Complainant, the parent, and the District Special Education Coordinator.

B. Legal Framework

The Office of Public Instruction (OPI) is authorized to address violations of the Individuals with Disabilities Education Act (IDEA) and Montana special education laws occurring within one year of the Complaint. 34 CFR §§ 300.151-153 and ARM 10.16.3661. All relevant information is required to be reviewed and an independent determination made as to whether the District violated IDEA and state law. 34 CFR §§ 300.151-153 and ARM 10.16.3662.

C. Findings of Fact

1. Complainant has standing to file this Complaint under the Montana special education complaint process at ARM 10.16.3661. Student's mother has waived confidentiality to permit Complainant to share and receive confidential information for purposes of this Complaint.
2. The Student is an 11 year-old 6th grader who attends school in the District. From as early as October, 2007, he displayed behavior difficulties. In September, 2008, the District's Montana Behavior Initiative (MBI) team met with the parent who requested assistance and revealed that the Student was being treated for Depression and ADHD. A Section 504 plan and special education evaluation were discussed. No plan or program was put in place but a number of "accommodations" were implemented.
3. Serious behavior problems continued with various meetings between the parties.¹ The parent also complained the Student was being bullied at school. At parent's request a Behavior Intervention Assistance Team met on May 7, 2009 and on May 11, 2009. The District assessed the student for Asperger Syndrome for which they determined he did

¹ Four major incidents and 10 minor incidents through School Year 2008 so parent withdrew him 2/25/08. In School year 2009, the District reports four major incidents resulting in suspension and 12 minor incidents.

not qualify. The parent chose not to have the Student evaluated for the category of emotional disturbance. A behavior plan was implemented in the fall. Serious behavior problems continued and on one occasion in October, 2009, the District called law enforcement and Student was cited for assault. The District responded with a behavior contract.

4. In November, 2009, the parties agreed to a school-based mental health eligibility evaluation and the Student was found to be eligible for those services. Further incidents occurred and more citations were issued or threatened, including for a December 9, 2009 incident which resulted in the Student being removed from school by the parent.
5. On January 7, 2010, a continued evaluation meeting was held and the Student was deemed eligible for special education services.
6. Three IEP meetings were held in January, 2010.
7. On February 1, 2010, an IEP was put into place for the Student, who returned to school February 3, 2010 with various supports.
8. At the February 1, 2010 IEP meeting the parent acknowledged receipt of a copy of the Procedural Safeguards Notice.
9. Five major behavioral incidents occurred in March and April. On March 19, 2010, a serious behavioral incident resulted in the Student being taken to the emergency room.
10. After the March 19, 2010 incident, the Student was kept out of school by the parent, based on the recommendation of his pediatrician, until his placement in a psychiatric facility on April 5, 2010.
11. The District was aware the Student was home during this time, but offered no services, and the IEP team did not convene between March 19, 2010 and April 5, 2010.
12. The Student was hospitalized from April 5, 2010 to June 12, 2010.
13. The parent signed a release of information on March 23, 2010 for the District to provide information to Shodair during the Student's hospitalization and the District sent the Student's educational records to the hospital. The facility provided special education and related services during the hospitalization as required by law.
14. In August 2010, the parent began negotiations with the District to transfer the Student from **** Elementary to **** School, another school in the District. Meanwhile, the parent chose to home-school the Student until he could be transferred.
15. The parent contacted the school a number of times about enrolling the Student in **** for the 2010-2011 school year. There is dispute regarding whether the parent had initially informed **** School that the Student was eligible for special education services, but there is no documentation the school was informed.
16. In the fall of 2010, the parent again requested to enroll the Student at **** School.
17. The District told the parent that **** was at capacity and could not accept other students. The District explained the enrollment process at **** in a letter dated October 25, 2010.
18. On November 10, 2010, the parent and District met to discuss school placement. During the meeting there was a conference call with Shodair Hospital staff to talk about the Student's needs. The meeting included the parent, the parent's advocate, and the principals from both **** and ****. It is not clear who the other participants were, but all members of the Student's IEP were not present. Apparently, no decisions were made at the meeting.

19. No special education meeting notice was provided to the parent regarding the November 10, 2010 meeting, and the Student's complete IEP team was not present. The Student's IEP was not reviewed or revised at the meeting.
20. Meeting notes state that a follow-up meeting would occur in two weeks but the follow-up meeting did not take place.
21. On January 13, 2011, the Student's IEP team convened to review and revise the Student's IEP and services began soon after.
22. The Complaint was filed on April 19, 2010 and amended May 24, 2010.

D. Issues Analysis and Conclusions of Law

1. Whether the District offered FAPE between March 19, 2010 and April 5, 2010 while Student was at home waiting to enter Shodair Children's Hospital.

The Student experienced a traumatic behavioral incident on March 19, 2010 at school. He was taken to the emergency room where they recommended he be placed in a psychiatric facility. Until hospitalization could occur two and a half weeks later, he remained at home. The Complaint asserts that during this time, the District made no offer of FAPE. The District Response claims the allegation was outside the one-year limitation for filing a State Complaint because it dated from March 19, 2010 to April 5, 2010 and this Complaint was originally filed April 19, 2011.

The District is correct that a State Complaint must allege a violation occurring not more than one year prior to the date that the complaint is received unless a state has added additional protections. 34 CFR § 300.153(c). This allegation is therefore **denied**.²

2. Whether the District failed to provide FAPE while the Student was hospitalized between April 5, 2010 to June 12, 2010.

Complainant alleges the District failed to provide FAPE to the Student while he was hospitalized. Section 20-7-420, MCA, provides that the school district of residence is generally responsible for ensuring eligible students receive FAPE. However, when a child is placed in a state psychiatric facility, the facility provides special education services through contract with OPI. Section 20-7-420(3), MCA. There is no allegation that Shodair did not provide special education services to the Student during his hospitalization. The District is not responsible for the Student's special education at Shodair. The District is found to be in **compliance** on this issue and this allegation is denied.

3. Whether the District failed to provide FAPE to the Student between June 12, 2010 and January, 2011, the date from when he was released from the hospital until he returned to school.

² Pursuant to OPI's general supervisory authority pursuant to 34 CFR § 300.149, this issue will be referred to the OPI monitoring unit for review.

Complainant asserts the District failed to provide FAPE after the Student was discharged from the hospital on June 12, 2010 and for months thereafter. She alleges the parent informed the District that the Student needed services and continually contacted the District about re-enrolling the Student but in a different elementary school in the District. The District argued that those personnel were unaware of the Student's special education status and focused on deciding the Student's school location.

During the investigation, the District acknowledged its responsibility to enroll the Student and develop a current IEP at the beginning of the 2010-2011 school year although it did not do so. Regarding the period of June 12, 2010 to the start of the school year, the Student's February 1, 2010 IEP did not require Extended School Year services. However, the IEP should have been revisited before the start of school to adjust for the Student's needs. The District rightfully has offered the Student compensatory services for the period from the beginning of the 2010-2011 school year to January 13, 2011, when the IEP was reviewed and revised. The District's failure to conduct an IEP meeting pursuant to 34 CFR §§300.323 and 300.324 demonstrates **noncompliance** with regard to this issue.

4. Whether the District denied the parent an opportunity to meaningfully participate in the IEP process with respect to the November 10, 2010 meeting with school officials.

Complainant asserts the parent believed the November 11, 2010 meeting was an IEP meeting to discuss the Student's special education placement. At the meeting, the parent insisted that the Student be enrolled in the **** School because of the difficulties the Student had the previous year at **** Elementary School. Complainant asserts the rights of the parent were violated when the District failed to provide notice of the meeting as an IEP meeting; refused to discuss alternative placements for the Student at the meeting; and made no attempt to contact the parent or schedule an IEP until after the filing of a State Complaint in December, 2010.

The District denies the November 11, 2010 meeting was an IEP meeting and asserts the purpose was to provide the parent with information about attendance at **** versus **** schools, and the District's recommendation that the Student attend ****. No final decisions were made about which school the Student would attend.

Specific procedures are required of a district for holding an IEP meeting: meeting notice³, IEP team attendance⁴; and Prior Written Notice regarding any proposal to change or refusal to change the identification, evaluation, or educational placement of the student⁵. Although the parent was expecting and hoping for an IEP meeting on November 10, 2010, there is no indication that this was an IEP meeting. Because this was not an IEP meeting, the District was not required to discuss educational placement or give an official meeting notice. The District is found to be **in compliance** with regard to this issue.

³ 34 CFR § 300.322

⁴ 34 CFR § 300.321

⁵ 34 CFR § 300.503

5. Whether the District contacted and requested information from Shodair staff for the November 11, 2010 meeting without the parent's prior knowledge or consent in violation of the IDEA.

The Complaint argues the District contacted Shodair before the November 11, 2010 meeting without the parent's consent. Complainant stated the consent for release of information signed by Mother on March 23, 2010 had been terminated by the parent during the Student's stay at Shodair. The District states it had a release of information to Shodair dated March 23, 2010 that was signed by the parent. Further, the principals only communicated with Shodair via conference call during the November 10, 2010 meeting at which the parent was present. The District did not communicate with Shodair outside the presence of the parent who expressed no objection to the call.

Parental consent must be obtained before personally identifiable information is disclosed to other parties. 34 CFR § 300.622. The parent signed a valid consent for the school to release the Student's information to Shodair. There is no evidence that consent was withdrawn, or that there was any attempt by the parent at the November 10, 2010 meeting to inform either the District or Shodair that consent had been terminated. Based on the lack of evidence that the District violated 34 CFR § 300.622, the District is found to be **in compliance** with regard to this issue.

6. Whether the District failed to provide the parent with the Procedural Safeguards Notice after the Complaint was first filed.

Complainant asserts the District failed to provide the parent a copy of the Procedural Safeguards Notice after the Complaint was filed on April 19, 2010. The District argues that there is no requirement to provide a copy of the Procedural Safeguards Notice when the Complaint was filed and, furthermore, they had already provided the notice to the parent at a previous February 1, 2010 IEP meeting.

A copy of the procedural safeguards available to the parent must be given "upon receipt of the first State complaint under §§ 300.151 through 300.153..." 34 CFR § 300.504 (a)(2). This was Complainant's second complaint under the regulations however the parent, LN, is not a party to this action. Although OPI encourages school districts to provide Procedural Safeguards Notice to any person as needed, the District was not in error in failing to do so here. The District is found to be in **compliance** with regard to this issue.

E. Disposition

The District is hereby ORDERED to take the following steps:

1. By **September 23, 2011**, the District will review and revise its policies and procedures as necessary to address enrollment and services to IDEA eligible students whose disability and/or behavior warrants absences from the school setting for a period of

time. Revised procedures must be sent to the Dispute Resolution Director for approval by **October 7, 2011**.

2. The District will provide training to the special education staff, including administrators regarding the revised policies and/or procedures by **October 7, 2011** and provide copies of those changes to the Dispute Resolution Director at that time.
3. By **September 7, 2011**, the District shall reconvene the Student's IEP team and determine the types, frequencies, and duration of the compensatory services that are required to restore the Student where he would be had he received the appropriate services from the beginning of the 2010-2011 school year to January 13, 2011. All compensatory services must be approved by the Dispute Resolution Director and completed with one year of the date of this Final Report. The IEP and accompanying documents must be received by the Dispute Resolution Office by **October 7, 2011**.

Sincerely,

Ann Gilkey, Compliance Officer

c: Mary Gallagher, Dispute Resolution/EAP Director

****, parent